

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00158-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-377-003.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4229 W. 27th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant lot at \$3,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On October 15, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert W. Metz and Gordona Bauhan, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: Property Record Card (“PRC”) for 2008-2015
 - b. Respondent Exhibit A: PRC for 2008-2015
 - c. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. Here, there was no change in the property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The property is in an area that shows roads and improvements on the survey, but the roads do not really exist. They are just "paper streets." *Nowacki testimony*.
 - b. The property receives a negative 20% influence factor, but the Assessor should increase it to 50%. The property record card shows the neighborhood as static even though the assessments for properties in the area have actually declined. *Nowacki testimony; Pet'r Ex. 1*.
 - c. Nowacki acquired the property for \$113 at an auction attended by hundreds of willing and able bidders. None of the bidders saw the property as being worth more than \$113 or they would have bid on it. Nowacki contends a valuation of \$2,400 would be a more accurate assessment of the property. *Nowacki testimony*.
8. The Assessor's case:
 - a. The Assessor contends Nowacki presented no evidence, and there is nothing to rebut. *Bauhan testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for a reducing the property's 2013 assessment. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead

- determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the property’s 2013 assessment should be \$2,400, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Nowacki’s other contentions focused on the Assessor’s alleged errors in applying an influence factor and identifying the state of the property’s neighborhood. Even if the Assessor made errors, simply challenging the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
 - e. To the extent Nowacki was asserting that his purchase price of \$113 reflects the property’s correct value, we disagree. The purchase price of a property can be the best evidence of a property’s value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to prove that the auction met the requirements of an open market transaction. Nor did he attempt to relate the purchase price to the relevant valuation date. Consequently, the purchase price is not probative evidence of the property’s market value-in-use.
 - g. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence

is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 assessment.

ISSUED: January 11, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.